IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2777 OF 2005

1. Mr. Vijay Sharma,)
2. Mrs. Kirti Sharma,)
both residing at Flat No.72, Royal)
Accord, Building No.2,)
Lokhandwala Complex, Andheri)
(West), Mumbai – 400 053.) ... Petitioners

Versus

1. Union of India through the)
Ministry of Law & Justice, Ayekar)
Bhavan, New Marine Lines,)
Mumbai.)
2. Ministry of Health and Family)
Welfare, Nirmal Bhavan, New)
Delhi.) ... Respondents

Ms. Ratna Bhargavan for the petitioners.

Ms. Jyostna Pandhi with Mr. Mandar Goswavi for respondents 1 and 2.

Mr. Uday Warunjikar for the Intervenor.

CORAM : SWATANTER KUMAR, C.J. &
SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 2ND JULY, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 6TH SEPTEMBER, 2007.

JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. In this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the constitutional validity of sections 2, 3-A, 4(5) and 6(c) of the Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (for short, "the said Act") as amended by The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (for short, "the Amendment Act, 2002").

2. Before dealing with the contentions raised in the petition, it must be stated that challenge to the constitutional validity of the said Act on the ground of violation of Article 21 of the Constitution of India has been rejected by this Court in ***Vinod Soni & Anr. v. Union of India & Ors., 2005 (3) MLJ 1131***. It is not open to the petitioners to raise the same challenge again. We shall, therefore, only deal with the petitioners' contention that the said Act violates the principle of equality of law enshrined in Article 14 of the

Constitution of India.

3. The petitioners are a married couple having two female children. It is their case as disclosed in the petition that they are desirous of expanding their family provided they are in a position to select the sex of the child. It is obvious from the petition that the petitioners are desirous of having a male child. According to them, they can then enjoy the love and affection of both, son and daughter simultaneously and their existing children can enjoy the company of their own brother while growing up if they are allowed to select sex of their child and have a son. The petitioners have approached various clinics for treatment for the selection of the sex of the foetus by pre-natal diagnostic techniques. However, all clinics have denied treatment to them on the ground that it is prohibited under the said Act.

4. According to the petitioners, they have no intention to misuse the pre-natal diagnostic techniques. They contend that they are financially sound and capable of looking after and bringing up one

more child. They cannot be treated on par with other couples, who in order to have a male child, indulge in sex selective abortion. The provisions of the said Act cannot be made applicable without distinction. According to the petitioners, they only want to balance their family. They contend that a married couple, who is already having child belonging to one sex should be permitted to make use of the pre-natal diagnostic techniques to have a child of the sex which is opposite to the sex of their existing child. In fact, ideal ratio of females to males can be maintained if the pre-natal diagnostic techniques are allowed to be used. Burden of the song is that couples who are already having children of one sex should be allowed to have a child of the sex opposite to the sex of their existing children by use of the pre-natal diagnostic techniques at pre-conception stage.

5. We have heard Ms. Ratna Bargavan, the learned counsel appearing for the petitioners. The contentions raised in the petition and in the affidavit in reply of petitioner 1 and the contentions raised in the court by the learned counsel for the petitioners can be

summed up as under :

(a) The provisions of the said Act cannot be made applicable without any distinction. Couples who have a male or a female child should be allowed to make use of the pre-natal diagnostic techniques to have a child of the sex opposite to the sex of their existing child to balance their family. Such couples cannot be treated on par with couples who choose the sex of foetus in order to have a male child leading to imbalance in male to female ratio. The unconstitutionality of the said Act is visible to the class of couples who are already having child/children of one sex.

(b) The Objects and Reasons of the Medical Termination of Pregnancy Act, 1997 (for short,

"MTP Act") read with section 3(2)(i) thereof permit termination of pregnancy of a woman by a registered medical practitioner if the pregnancy would involve risk to the life of the pregnant woman or grave injury to her physical or mental health. Explanation II to section 3 states that where any pregnancy occurs as a result of failure of any devise or method used by any married woman or her husband for the purpose of limiting the number of children, anguish caused by such unwanted pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman. However, under the said Act, a woman having children of the same sex is not allowed to use the pre-natal diagnostic techniques to have children of the opposite sex. The legislature has not taken into consideration the fact that having a child of the same sex as that of the

existing child/children also causes grave mental injury to a woman. Whereas MTP Act allows abortion in case a child is conceived on account of any failure of device used by the couple for the purpose of limiting the number of children on the ground that anguish caused by such pregnancy may be presumed to constitute a grave injury to the mental health of the pregnant woman, while enacting the said Act the legislature has not considered what anguish would be caused to a prospective mother who conceives a female child or a male child for the second or third time. The legislature has not appreciated that such anguish must also be termed as grave injury to the mental health of the prospective mother. Thus, there is discrimination between women situated in similar position. The said Act, therefore, violates Article 14 of the Constitution of India.

The MTP Act and the said Act are Central Acts. If by one statute certain rights are conferred upon a prospective mother, the same cannot be denied to a prospective mother by another statute originating from the same source. For this proposition, reliance is placed on the judgment of the Supreme Court in ***State of Tamil Nadu and Ors. v. Ananthi Ammal & Ors., AIR 1995 SC 2114***.

(c) Under the MTP Act, termination of pregnancy is allowed under certain circumstances. Foeticide is sanctioned under certain circumstances. However, by sex selection before conception with the help of the pre-natal diagnostic techniques, sex of the child is determined by choosing the male/female chromosome before fertilization and the fertilized egg is inserted in the womb of the mother. This does not lead to

foeticide. There is, therefore, no reason to impose a blanket ban on the use of the pre-natal diagnostic techniques.

(d) Under the said Act, the use of the pre-natal diagnostic techniques is permitted under certain conditions by registered institutions. The words `certain conditions' should be interpreted in such a manner that inherent uncertainty existing in section 2 of the Amendment Act, 2002 and sections 3A, 4(5) and 6(c) of the said Act as inserted by the Amendment Act, 2002 is removed and the possible hardship of the couples who are already having one child can be avoided by permitting them to have child of the sex opposite to the sex of their existing child.

(e) The intention of the legislature to regulate and

prevent misuse of the pre-natal diagnostic techniques is evident from the fact that the title of the Amendment Act, 2002 contains the words “Regulation and Prevention of Misuse”. These words replace the words “Prohibition of Sex Selection” used in the said Act. The intention of the legislature was to regulate and prevent misuse of the pre-natal diagnostic techniques and not a blanket prohibition thereof.

(f) The pre-natal diagnostic techniques can be used to achieve positive result i.e. to attain an ideal male to female ratio. Due to the stringent provisions of the said Act, the pre-natal diagnostic techniques are used by doctors and couples in hasty and hush hush manner which is likely to affect the mindset of prospective mothers. Fertility clinics have spwaned all over

where couples who do not have children are taking treatment to get the child of their choice. Such misuse needs to be prevented by providing for an exception whereby only couples who have a child can be allowed to choose the sex of the second child provided the child they propose to have is of the sex opposite to the sex of their existing child.

(g) Section 31-A of the said Act provides that the Central Government may publish an order in the Official Gazette within 3 years from the commencement of the said Act for removal of difficulties if any, in giving effect to the provisions of the said Act. The difficulties of the couples having one child need to be taken into account. It is, therefore, necessary for the Central Government to publish the necessary order in the Official Gazette and bring about

necessary amendment in the said Act.

6. Strong exception is taken to the submissions of the petitioners' counsel and the contentions raised by the petitioners, by the learned counsel for the respondents. Affidavit in reply is filed by Ms. Sushma Rath, Under Secretary, Ministry of Health & Family Welfare and by Versha Deshpande, a Social Worker, whose intervention is allowed by this court considering the importance of the issues involved in this petition.

7. It is necessary to quote section 2 of the Amendment Act, 2002 and sections 3-A, 4(5) and 6(c) of the said Act as inserted by the Amendment Act since the constitutional validity of the said provisions is under challenge. Section 2 of the Amendment Act, 2002 reads thus:

> *"**2. Substitution of long title. -** In the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (hereinafter referred to as the principal Act), for the long title, the following long title shall be substituted, namely :-*

"An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto."

Sections 3-A, 4(5) and 6(c) of the said Act read thus:

"3. Regulation of Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics. *- On and from the commencement of this Act, -*

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

[3-A. Prohibition of sex selection. *- No person, including a specialist or a team of specialists in the field of infertility, shall conduct or cause to be conducted or aid in conducting by himself or by any other person, sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, fluid or gametes derived from either or both of them].*

(4) Regulation of pre-natal diagnostic techniques. *- On and from the commencement of this Act, -*

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) no person including a relative or husband of a woman shall seek or encourage the conduct of any sex-selection technique on her or him or both.

(6) Determination of sex prohibited. *- On and from the commencement of this Act, -*

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) no person shall, by whatever means, cause or allow to be caused selection of sex before or after conception."

8. It is necessary to first deal with the submission that the use of the words "Regulation & Prevention of Misuse" in the Amendment Act, 2002 is indicative of the legislative intent only to regulate and prevent misuse because these words substitute the words "Prohibition of Sex Selection" in the said Act. This, in our opinion, is a totally fallacious argument. The title of the earlier Act was the

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (for short, "the 1994 Act"). It's long title prior to its amendment by the Amendment Act, 2002 was as under :

> ***1. Substituted by the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (14 of 2003), S.2, for long title (w.e.f. 14-2-2003).*** *Prior to its substitution, long title read as under :- "An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal-formations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto."*

By the Amendment Act, 2002, it was substituted by the following long title :

> *"An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to*

female foeticide and for matters connected therewith or incidental thereto."

9. By the Amendment Act, 2002, the 1994 Act i.e. the Pre-natal Diagnostic Techniques (Regulation & Prevention of Misuse) Act was renamed as the said Act i.e. the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Statement of Objects and Reasons of the Amendment Act, 2002 must be quoted. It reads thus:

"Amendment Act 14 of 2003 – Statement of Objects and Reasons. *- The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 seeks to prohibit pre-natal diagnostic techniques for determination of sex of the foetus leading to female foeticide. During recent years, certain inadequacies and practical difficulties in the administration of the said Act have come to the notice of the Government, which has necessitated amendments in the said Act.*

2. The pre-natal diagnostic techniques like amniocentesis and sonography are useful for the detention of genetic or chromosomal disorders or congenital malformations or sex linked disorders, etc. However, the amniocentesis and sonography are being used on a large scale to detect the sex of the foetus and to terminiate the pregnancy of the unborn child if found to be

female. Techniques are also being developed to select the sex of child before conception. These practices and techniques are considered discriminatory to the female sex and not conducive to the dignity of the women.

3. The proliferation of the technologies mentioned above may, in future, precipitate a catastrophe, in the form of severe imbalance in male-female ratio. The State is also duty bound to intervene in such matters to uphold the welfare of the society, especially of the women and children. It is, therefore, necessary to enact and implement in letter and spirit a legislation to ban the pre-conception sex selection techniques and the misuse of pre-natal diagnostic techniques for sex-selective abortions and to provide for the regulation of such abortions. Such a law is also needed to uphold medical ethics and initiate the process of regulation of medical technology in the larger interests of the society.

4. Accordingly, it is proposed to amend the aforesaid Act with a view to banning the use of both sex selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques with a view to ensuring their scientific use for which they are intended.

5.The Bill seeks to achieve the aforesaid objects."

10. The Statement of Objects and Reasons of the Amendment Act, 2002 therefore clearly indicates that the legislature was

alarmed at the severe imbalance created in the male to female ratio on account of rampant use of the pre-natal diagnostic techniques made to detect sex of the foetus and to terminate the pregnancy of the unborn child if found to be female. The legislature took note of the fact that certain techniques are being developed whereby even at pre-conception stage, sex of the child can be selected and, therefore, the title of the 1994 Act was amended to include the words “Pre-conception” and “(Prohibition of Sex Selection)” in it. The legislature categorically stated that there was a need to ban pre-conception sex selective techniques and made it clear that the 1994 Act was sought to be amended with a view to banning the use of sex selection techniques prior to conception as well as misuse of pre-natal diagnostic techniques for sex selective abortions.

11. A look at certain important provisions of the said Act persuade us to reject the submission of the petitioners that the legislative intent is to only regulate the use of the said pre-natal diagnostic techniques. “Pre-natal diagnostic procedures” are

defined under section 2(1) of the said Act as all gynaecological or obstetrical or medical procedures such as ultrasonography, foetoscopy, taking or removing samples of amniotic fluid, chorionic villi, embryo blood or any other tissue or fluid of a man or of a woman before or after conception, for being sent to a Genetic Laboratory or Genetic Clinic for conducting any type of analysis or pre-natal diagnostic tests for selection of sex before or after conception.

12. “Pre-natal diagnostic test” is defined under section 2(k) of the said Act as ultrasonography or any test or analysis of amniotic fluid, chorionic villi, blood or any tissue or fluid of a pregnant woman or conceptus conducted to detect genetic or metabolic disorders or chromosomal abnormalities or congenital anomalies or haemoglobinopathies or sex-linked diseases.

13. Section 2(j) defines pre-natal diagnostic techniques. It states that pre-natal diagnostic techniques include all pre-natal diagnostic procedures and pre-natal diagnostic tests. Pre-natal diagnostic

techniques (for convenience, hereinafter referred to as “the said techniques”) can detect the sex of the foetus. Section 3-A prohibits sex selection on a woman or a man or on both of them or on any tissue embryo, conceptus, fluid or gametes derived from either or both of them and section 4 regulates use of the said techniques. Section 4(2) states that the said techniques shall not be conducted except for the purpose of detection of (i) chromosomal abnormalities; (ii) genetic metabolic diseases; (iii) heamoglobinopathies; (iv) sex linked genetic diseases; (v) congenital anomalies or any other abnormalities or diseases as may be specified by the Central Supervisory Board that too on fulfillment of any of the conditions laid down in sub-section 3. Thus the said techniques are to be used only to detect abnormalities in the foetus and not for sex-selection or sex-selective abortions. Section 5(2) states that no person including the person conducting pre-natal procedures shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner. Section 6(c) prohibits determination of sex by stating that no person shall, by whatever

means, cause or allow to be caused selection of sex before or after conception.

14. Under the said Act machinery is created to ensure that there is no sex selection at pre-conception stage or thereafter and there is no pre-natal determination of sex of foetus leading to female foeticide. Therefore, the submission that the use of the said techniques is only intended to be regulated, must be rejected.

15. The challenge on the ground of violation of Article 14 rests on the comparison between the said Act and the MTP Act which are Central Acts. In our opinion, the object of both the Acts and the mischief they seek to prevent difer. They cannot be compared to canvass violation of Article 14. We have already quoted the Statement of Objects and Reasons of the Amendment Act, 2002. What it seeks to ban is pre-conception sex selection techniques and use of pre-natal diagnostic techniques for sex-selective abortions. Having taken note of the alarming imbalance created in male to female ratio and steep rise in female foeticide legislature

has amended the Act of 1994. It, inter alia, prohibits sex selection on a woman or a man or on both or on any tissue, embryo, conceptus, flued or gamets derived from either or both of them. It prohibits any person to cause or allowed to be caused selection of sex before or after conception.

16. The MTP Act is an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Statement of Objects and Reasons of the MTP Act indicates that it concerns itself with the avoidable wastage of the mother's health, strength and sometimes life. It seeks to liberalize certain existing provisions relating to termination of pregnancy as a health measure – when there is danger to the life or risk to physical or mental health of the woman, on humanitarian grounds – such as when pregnancy arises from a sex crime like rape or intercourse with a mentally ill woman, etc. and eugenic grounds – where there is substantial risk that the child, if born, would suffer from deformities and diseases. It does not deal with sex selective abortion after conception or sex

selection before or after conception.

17. It is true that under section 3(2) of the MTP Act, when two registered medical practitioners form an opinion that continuance of the pregnancy would involve a risk to the life of the pregnant woman or grave injury to her physical or mental health, pregnancy can be terminated and, under Explanation II thereof, where any pregnancy occurs as a result of a failure of a devise used by the couple for the purpose of limiting the number of children, the anguish caused by such unwanted pregnancy is presumed to constitute a grave injury to the mental health of the woman. It must be remembered that termination of pregnancy under the MTP Act is not prompted because of the unwanted sex of the foetus. It could be a male or a female foetus. The MTP Act does not deal with sex selection. The petitioners want to equate the situation of a prospective mother under the MTP Act with the prospective mother under the said Act. They contend that anguish caused to a woman who is carrying a second or third child of the same sex as that of her existing children and who is desirous of having a child of the

opposite sex also constitutes a grave injury to her mental health. According to the petitioners, this aspect has been overlooked by the legislature. They contend that an exception ought to have been carved out for such women. It is their contention that inasmuch as both these Acts are Central Acts and deal with prospective mothers if by MTP Act certain rights are conferred on a prospective mother, the same cannot be denied to the prospective mother by the said Act. We are unable to accept this submission. Apart from the fact that both the Acts operate in different fields and have different objects acceptance of the submissions of the learned counsel would frustrate the object of the said Act. A prospective mother who does not want to bear a child of a particular sex cannot be equated with a mother who wants to terminate the pregnancy not because of the foetus of the child but because of other circumstances laid down under the MTP Act. To treat her anguish as injury to mental health is to encourage sex selection which is not permissible. Therefore, by process of comparative study, the provisions of the said Act cannot be called discriminatory and, hence, violative of Article 14.

18. It is well settled that when a law is challenged as offending against the guarantee enshrined in Article 14, the first duty of the court is to examine the purpose and the policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object which the legislature seeks to obtain. The purpose or object of the Act is to be ascertained from an examination of it's title, preamble and provisions. We have done that exercise in the preceding paragraphs and we are of the considered opinion that the said Act does not violate the equality clause of the Constitution.

19. Our attention is drawn to the frightening figures which show the imbalance in male to female ratio in various parts of India. Ms. Sushma Rath, Under Secretary, Ministry of Health & Family Welfare has in her affidavit in reply stated that there is a considerable decline in the number of female children and the financially sound areas of Punjab, Haryana and Delhi are worst

affected. Ms. Versha Deshpande has in her affidavit stated that the percentage of female children is on the decline in Maharashtra. The booklet titled “missing” published by the Ministry of Health & Family Welfare on which reliance is placed by respondent 1 makes an interesting reading. It captures the decline in the number of girls as compared to boys in India. It is necessary to quote two paragraphs from the same, which have caused great distress to us.

> *“The sex ratio at birth is slightly favourable to boys. This means that more boys are born as compared to girls. This is a natural phenomenon. The sex ratio at birth is usually between 940-950 girls per 1000 boys. The child sex ratio is calculated as number of girls per 1000 boys in the 0-6 years age group. In India, however, the 1991 Census reported a child sex ratio of 945 girls per 1000 boys which further declined to 927 during 2001 Census. Over the years, this ratio has fallen from 976 in 1961 to 964 in 1971, and 962 in 1981. A stage may soon come when it would become extremely difficult, if not impossible, to make up for the missing girls. Society needs to recognise this discrimination : girls have a right to live just as boys do. Moreover, missing numbers of iether sex, and the resulting imbalance, can destroy the social and human fabric as we know it.*
>
> *In States such as Haryana, Punjab, Delhi*

> *and Gujarat, this ratio has declined to less than 900 girls per 1000 boys. 70 districts in 16 States and Union Territories have recorded a more than 50 point decline in the child sex ratio during the decade 1991-2001. The ratio stands at a mere 770 in Kurukshetra district of Haryana, 814 in Ahmedabad, and 845 in the South West district of Delhi – even though these regions are amongst the most prosperous in the country."*

20. That there is decline in the number of girls is not seriously disputed by the petitioners. According to them, the imbalance is caused by the couples who have no children and who by using the said techniques choose male child. In our opinion, no such distinction is permissible. It cannot be denied that in India there is strong bias in favour of a male child. Various causes have led to this preference. It is felt that son carries the name of the family forward and only he can perform religious rites at the time of cremation of the parents. Sons are said to provide support in the old age. Several socio-economic and cultural factors are responsible for this craving for a son. It is unfortunate that people should still be under the influence of such outdated notions. As long as such notions exist, the girl child will always be unwanted

because it is felt that she brings with her the burden of dowry. These hard realities will have to be kept in mind while dealing with the challenge raised to the constitutional validity of a statute which tries to ban sex selection before or after pre-conception and misuse of the said techniques leading to sex selective abortions. None can be allowed to use the said techniques for sex selection. The justification offered by the petitioners is totally unacceptable to us.

21. Certain averments made in the petition are shocking and they reinforce our conclusion that the challenge to the said Act must be thrown overboard. Ground (g) reads as under :

> "(g) If the country is not advanced socially and economically to accept a female child, it is better such children are not born. The highly advanced treatment should be accepted and utilized for achieving positive mindset."

Ground (m) reads as under :

> "(m)As long as the patriarchal system exists the

> craving for a male child is likely to be there and one cannot erase the said issue from the mindset of the people. Hence, it is necessary to balance the family with a male and female child if financial social and other circumstance permits."

22. The petitioners have boldly proclaimed that if the country is not economically and socially advanced, it is better that female children are not born. Patriarchal system is the answer for the craving for a male child. If patriarchal system or economic and social backwardness is responsible for female foeticide, efforts should be made to rectify the system and improve the socio-economic status of the society. But this court cannot accept it as a fate accompli, permit an abject surrender to it and allow sex selection or misuse of the said techniques leading to female foeticide. The petitioners' case that the use of the said techniques can result in obtaining equal male to female ratio is nullified by their own averments. We have no doubt that if the use of the said techniques for sex selection is not banned, there will be unprecedented imbalance in male to female ratio and that will have disastrous effect on the society. The said Act must, therefore, be

allowed to achieve its avowed object of preventing sex selection. In our opinion, the provisions of the said Act which are sought to be declared unconstitutional are neither arbitrary nor unreasonable and are not violative of Article 14.

23. It is then submitted that by sex selection before conception with the help of the said techniques, sex of the child is determined by using male/female chromosome before fertilization and the fertilized egg is inserted in the womb of the mother. There is, therefore, no foeticide and, hence, it is not necessary to impose any ban on the said techniques.

24. It is not possible to accept this submission. Techniques like sonography which are useful for the detection of genetic or chromosomal disorders or congenital malformations are being used to detect the sex of the foetus and to terminate the pregnancy in case the foetus is female. Similarly, pre-conception sex selection techniques which have now been developed make sex selection before conception possible. If prior to conception by choosing

male or female chromosome sex of the child is allowed to be determined and fertilized egg is allowed to be inserted in the mother's womb that would again give scope to choose male child over female child. In such cases, even if it is assumed that there is no female foeticide, indirectly the same result is achieved. The whole idea behind sex selection before pre-conception is to go against the nature and secure conception of a child of one's choice. It can prevent birth of a female child. It is as bad as foeticide. It will also result in imbalance in male to female ratio. The argument that sex selection at pre-conception is an innocent act must, therefore, be rejected.

25. We have so far laid stress on the possibility of severe imbalance in male to female ratio on account of artificial reduction in the number of female children caused by the use of the said techniques. But there is yet another and more important fact of this problem. That society should not want a girl child; that efforts should be made to prevent the birth of a girl child and that society should give preference to a male child over a girl child is a matter

of grave concern. Such tendency offends dignity of women. It undermines their importance. It violates woman's -right to life. It violates Article 39(e) of the Constitution which states the principle of state policy that the health and strength of women is not to be abused. It ignores Article 51A(e) of the Constitution which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women. Sex selection is therefore against the spirit of the Constitution. It insults and humiliates womanhood. This is perhaps the greatest argument in favour of total ban on sex selection.

26. We are of the considered opinion that the provisions of the said Act as amended by the Amendment Act, 2002 are clear, unambiguous and in tune with their avowed object. There is no uncertainty in any of the provisions as alleged in the petition. Therefore, it is not necessary for the Central Government to issue any order in the Official Gazette under section 31-A of the said Act for removal of difficulties on the grounds stated in the petition. This submission of the petitioners is, therefore rejected.

27. The petitioners have made a grievance that in fertility clinics which have spwaned all over, there is a misuse of the said techniques. It is contended that in the said clinics, the couples who do not have children are taking treatment to get a child of their choice. In ***Centre for Enquiry Into Health & Allied Themes (Cehat) and Ors. v. Union of India & Ors. (2003) 8 SCC 398***, a grievance was made by a Non Governmental organization that the provisions of the said Act are not properly implemented. After considering this grievance, the Supreme Court has noted that it has already issued directions to secure compliance of the provisions of the said Act. The Supreme Court has issued further directions to the Central Government, State Government and Union Territories to ensure compliance of its earlier directions. If the said directions are followed, proper implementation of the said Act would be secured. Though the petitioners have alleged misuse of the said techniques, no particulars of the misuse have been given. In any case, it is the duty of the respondents to ensure that the provisions of the said Act are properly implemented. The

respondents will have to abide by the directions of the Supreme Court. We, therefore, direct the respondents to abide by the directions issued by the Supreme Court and take all expeditious steps to prevent the misuse of the said techniques.

28. In the view that we have taken, the petition will have to be dismissed and is accordingly dismissed.

[CHIEF JUSTICE]

[SMT. RANJANA DESAI, J.]